

EXHIBIT 1

Zinus, Inc. v. Simmons Bedding Co., et al.
Case No. 07-CV-03012-PVT



US00RE36142E

United States Patent [19]

[19]

[11] E

Patent Number: Re. 36,142

Steed et al.

[45] Reissued Date of Patent: Mar. 16, 1999

[54] METHOD OF PACKAGING RESILIENTLY COMPRESSIBLE ARTICLES

[75] Inventors: C. Edward Steed, Alpharetta; Ricky F. Gladney, Fairburn, both of Ga.

[73] Assignee: Simmons Company. Atlanta, Ga.

[21] Appl. No.: 919,655

[22] Filed: Aug. 28, 1997

Related U.S. Patent Documents

Reissue of:

[64] Patent No.: 5,622,830
 Issued: Apr. 22, 1997
 Appl. No.: 694,803
 Filed: Aug. 9, 1996

U.S. Applications:

[63] Continuation of Ser. No. 416,065, Apr. 4, 1995, abandoned.

[51] Int. Cl.⁶ B65B 1/24

[52] U.S. Cl. 53/436; 53/524; 53/528;
53/114

[58] Field of Search 53/432, 436, 469,
53/399, 114, 524, 528

[56] References Cited

U.S. PATENT DOCUMENTS

1,861,429 5/1932 Schneider et al. S3/114

3,585,700	6/1971	Jansson	53/436
3,611,524	10/1971	Broyles	53/432
4,234,983	11/1980	Stumpf	
4,575,990	3/1986	von Bismarck	53/469
4,854,023	8/1989	Stumpf	53/114

Primary Examiner—James F. Coan

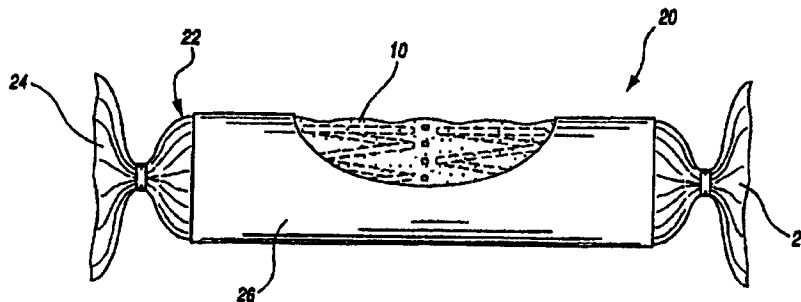
Assistant Examiner—Gene L. Kim

Attorney, Agent, or Firm—Jones, Day, Reavis & Pogue

[57] **ABSTRACT**

A method of packaging a resiliently compressible article comprises the steps of inserting the article into a tube of deformable material such that excess material is provided at the ends of the tube. A first end of the tube is then sealed closed. Air is then evacuated from the tube through the second end thereby deforming the tube around the article and causing the article to compress. While a vacuum is maintained in the tube, the second end of the tube is sealed closed. A containment sleeve is fitted over the sealed tube to maintain the article in a compressed state. When the article is unpackaged, the containment sleeve is severed and the tube is allowed to expand in a gradual controlled fashion by the bleeding of air back into the tube.

9 Claims, 3 Drawing Sheets

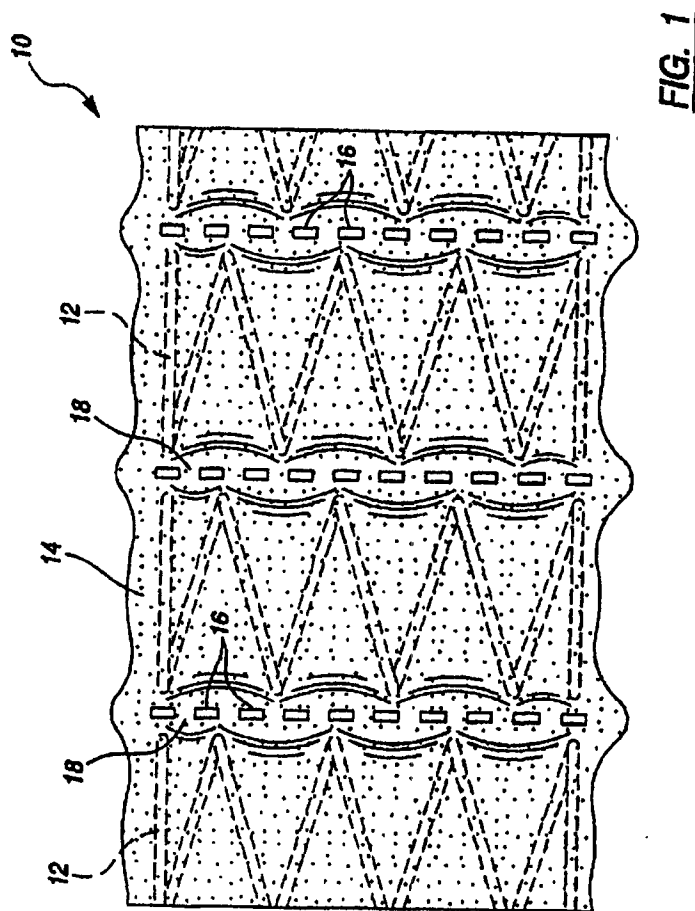


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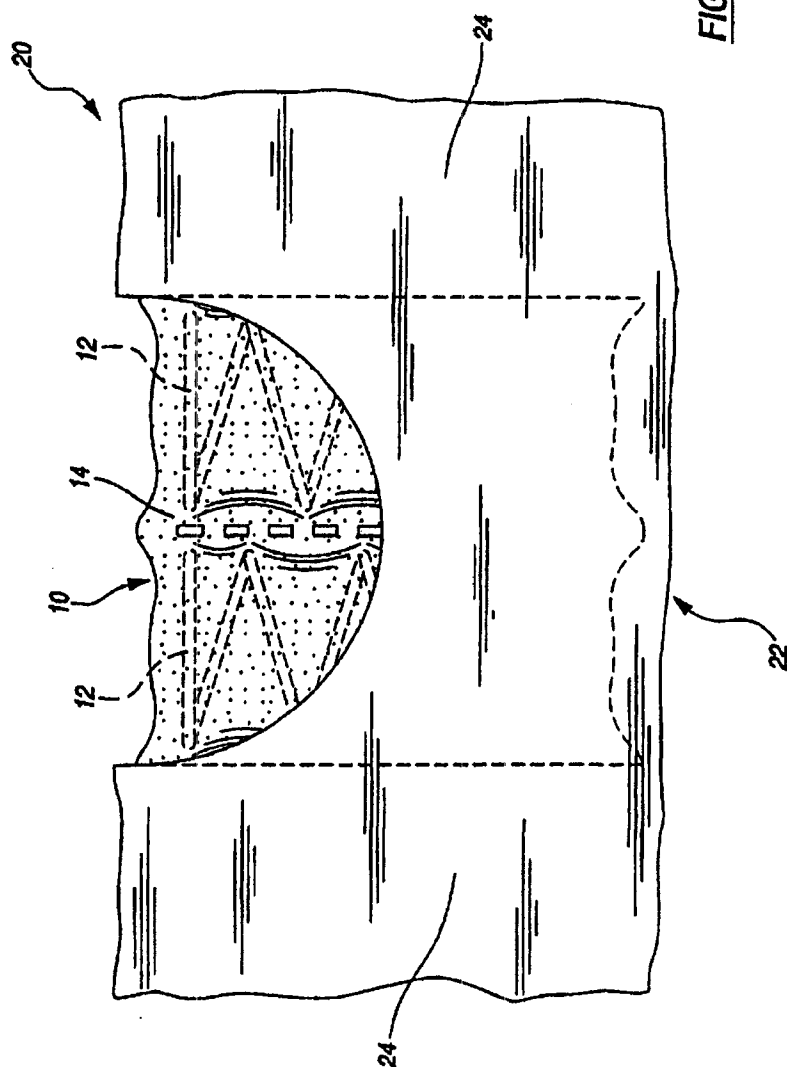


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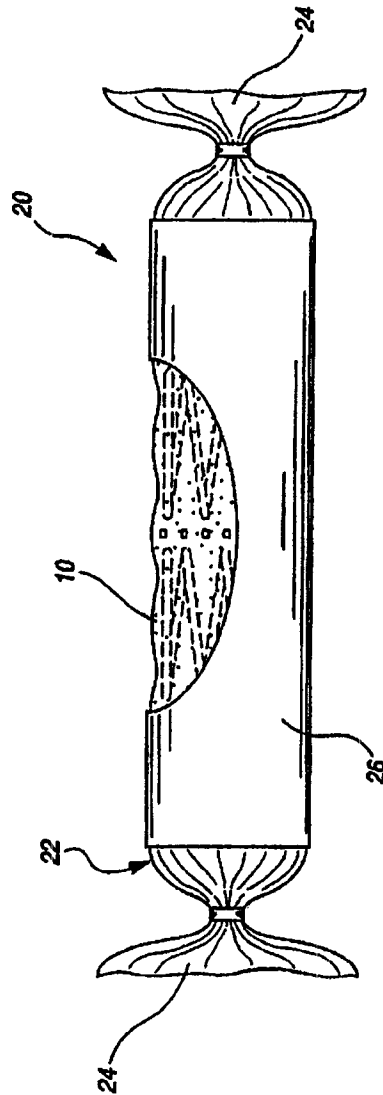


FIG. 3

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METHOD OF PACKAGING RESILIENTLY COMPRESSIBLE ARTICLES

Matter enclosed in heavy brackets [] appears in the original patent but forms no part of this reissue specification; matter printed in italics indicates the additions made by reissue.

This application is a reissue application of Ser. No. 08/694,803 filed on Aug. 9, 1996 now U.S. Pat. No. 5,622,030 which is a continuation of application Ser. No. 08/416,065 filed on Apr. 4, 1995 abandoned.

BACKGROUND OF THE INVENTION

1. Field of the Invention

The present invention relates generally to a method of packaging resiliently compressible articles and, more particularly, to a method wherein compressible articles can be conveniently packaged for shipment in a compressed state and can be unpackaged at their destination in a controlled manner.

2. Description of the Prior Art

Many articles of manufacture are lightweight and bulky and cannot be delivered to the consumer without an unduly high cost associated with shipment. Often these articles are also inexpensive to manufacture but their cost to the consumer accessarily reflects a disproportionately high component of shipping charges, thereby adversely affecting the perceived value of the article to the consumer. One such article whose cost of shipment is unduly high as compared to its manufactured cost is an innerspring component of a typical mattress, cushion or the like.

In standard mattress construction, for example, an innerspring assembly is used comprising an arrangement of closely packed coil springs. One form of innerspring construction which has proved to be highly successful is known as the Marshall construction. In this construction, individual coil springs are encapsulated in discrete pockets of fabric material with the pockets of fabric material formed together to create strings of coils. These strings of coils are then arranged in an array with the coil springs all oriented parallel to one another, thereby forming an innerspring assembly. An example of such construction is disclosed in U.S. Pat. No. 4,234,983, issued to Stumpf and assigned to the common assignee herein, the disclosure of which is expressly incorporated hereby by reference.

In order to construct a mattress assembly which provides adequate support yet is comfortable to the user, the springs used in the foregoing construction characteristically have such few coil turns and have such relatively weak compressive strength that they can be readily compressed to a size on the order of one-tenth their naturally expanded size. Accordingly, strings of coils of the foregoing type are lightweight and considerably bulky.

Recently, a new construction of mattress has been developed which is capable of being disassembled to knocked down form for convenient shipment to customers or retail outlets. Such a knock down mattress is disclosed in co-pending U.S. patent application Ser. No. 08/398,227 filed Mar. 3, 1995, assigned to the common assignee herein. This construction comprises four bolsters each having a generally rectangular cross section and dimensioned to be arranged in a mattress outline. The bolsters are retained within a shell having a bottom panel, perimeter side panels and a zippered cover panel. Each bolster comprises a fabric casing which contains lengths of pocketed spring coils.

The aforesaid mattress assembly, because of its knock down construction, can be shipped in a highly economical

manner by comparison to conventional unitary mattress structures. The components of this mattress can be assembled into packages of very manageable size for shipment. However, it is desirable to provide a packaging method which further reduces the size of the packaging. To this end, vacuum packaging of the coil springs may be employed wherein the strings of coils are compressed within an initially evacuated plastic tube and retained in a compressed state by a containment sleeve fitted over the tube as the vacuum source is removed.

Because conventional springs of the pocketed coil type can be compressed significantly from their naturally extended state, substantial reductions in size of packaging for such springs can be achieved by vacuum packaging methods. However, a disadvantage of using known vacuum packaging methods to provide a compressed package of springs is that once the vacuum source is removed from the inner tube, the springs are entirely dependent upon the presence of the outer containment sleeve for retaining their compressed condition. Thus, once the containment sleeve is severed, such as in opening of the package, the springs can expand to their fully extended state in an uncontrolled and somewhat abrupt manner. The result is that opening of the spring package by severing the containment sleeve with a sharp instrument, for example, can be a surprising and possibly dangerous experience. Accordingly, it is desirable to provide a vacuum packaging method for packaging springs in a manner which permits controlled expansion of the springs upon opening of the package.

SUMMARY OF THE INVENTION

The present invention improves over the prior art by providing a method of packaging a resiliently compressible article comprising the steps of inserting the article into a tube of deformable material such that excess material is provided at the ends of the tube. A first end of the tube is then sealed closed. Air is then evacuated from the tube through the second end thereby deforming the tube around the article and causing the article to compress. While a vacuum is maintained in the tube, the second end of the tube is sealed closed. A containment sleeve is fitted over the sealed tube to maintain the article in a compressed state. When the article is unpackaged, the containment sleeve is severed and the tube is allowed to expand in a gradual, controlled fashion by the bleeding of air back into the tube.

BRIEF DESCRIPTION OF THE DRAWINGS

The foregoing and other novel features of the invention will become apparent upon a reading of the following detailed description taken in conjunction with the accompanying drawings wherein:

FIG. 1 is a fragmentary side elevational view of a string of pocketed coil springs as known in the prior art;

FIG. 2 is a side elevational view partly broken away showing a packaging system in accordance with the invention prior to evacuation; and

FIG. 3 is a side elevational view partly broken away showing the packaging system after evacuation.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT

Referring now to the drawings, and initially to FIG. 1, a string of coil springs, as known in the art for use in innerspring construction of mattresses or the like is designated generally by the reference numeral 10. The coil string

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10 includes individual coil springs 12 which are encapsulated in discrete pockets of suitable fabric 14. The fabric 14 is preferably heat sensitive such that ultrasonically formed welds 16 create webs 18 between adjacent coils 12 thereby defining the pockets. It can be appreciated that in this construction of a mattress innerspring or the like, the coil springs 12 are typically formed of relatively few coil turns and relatively weak compressive strength. Accordingly, these springs 12 can readily be compressed to a size which is only a fraction of their naturally expanded size.

Turning now to FIG. 2, a package system in accordance with the invention is designated generally by the reference numeral 20. The system 20 is shown as packaging a string of coil springs 10 of the type illustrated in FIG. 1, comprising coil springs 12 which are pocketed in fabric 14. The string 10 is inserted into a tube of deformable material 22. In preferred form, this material 22 is $\frac{3}{4}$ mil polyethylene which has been extruded into tubular form and is supplied in roll form. The tube 22 has a length greater than the length of the coil string 10 such that the two ends of the tube 22 define portions 24 of excess tube material 22.

Illustrated in FIG. 3 is the package system 20 shown in completed form, wherein the coil string 10 has been compressed and is maintained in a compressed state by a containment sleeve 26. Preferably, the containment sleeve 26 is an extruded tube of 4 mil polyethylene. In order to achieve the configuration of FIG. 3, one end 24 of the tube 22 is gathered and sealed. Sealing can be accomplished by various means including taking the gathered end 24, taping it closed, pinching the end 24 with a suitable clip or cable tie, or heat sealing the end 24. Then, the open end is manually gathered around a hose connected to a vacuum pump and the air within the tube 22 is evacuated. Evacuation of the tube 22 causes the tube to deform around the string of coils 10 and in turn causes the coils 10 to compress. When evacuation has reached a predetermined level, the containment sleeve 26 is installed over the compressed tube 22 and the second end 24 of the tube [is] may be sealed. The vacuum source is then removed.

It can now be appreciated that the packaging method in accordance with the invention provides a highly desirable method for packaging articles which are resiliently compressible. Although the invention has been described in connection with the packaging of coil string 10, it can be appreciated that numerous other compressible articles can be packaged with the present method for cost-effective shipment. The advantages of sealing the tube 22 at both ends 24 after evacuation should likewise be apparent. When the package 20 is delivered, the customer can sever the containment sleeve 26 and initially the tube 22 together with the article encapsulated therein will remain relatively compressed under the effect of the vacuum within the tube 22. Then, depending upon the type of end 24 sealing method used, air will gradually bleed into the tube 22 allowing the compressed article to slowly expand until the inside of the tube 22 reaches ambient air pressure. Accordingly, an undesirable, abrupt expansion of the tube 22 is avoided. If a sealing method is used which is too air tight, the tube 22 can simply be punctured with a small hole to allow air to enter the evacuated tube 22. By this method of packaging, strings 10 of pocketed coil springs 12 stacked 23 inches high can readily be compressed to a stack 5 inches high and, thereby, can be packaged for cost-effective shipment.

While the present invention has been described in connection with a preferred embodiment thereof, it will be apparent to those skilled in the art that many changes and modifications may be made without departing from the true

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spirit and scope of the invention. Accordingly, it is intended by the appended claims to cover all such changes and modifications as come within the true spirit and scope of the invention.

What is claimed is:

1. A method of packaging a mattress assembly constructed of coil springs wherein each spring is contained within an individual pocket of fabric, comprising the steps of:

providing a tube of deformable material, said tube having a predetermined length;

inserting a mattress assembly constructed of pocketed coil springs into said tube, said mattress assembly having a length which is less than the length of said tube, thereby defining first and second tube ends of excess material;

sealing a first end of said tube;

evacuating air from said tube through said second end thereby deforming said tube around said mattress assembly and causing said mattress assembly to compress;

[sealing said second end of said tube after evacuating said tube to a predetermined state];

inserting said evacuated tube into a containment sleeve which is dimensioned and configured to retain said compressed mattress assembly in a compressed state for shipment;

removing said evacuated tube from said containment sleeve; and

puncturing said evacuated tube to allow whereby said mattress assembly in said tube [to] gradually [return] returns to an uncompressed state.

2. The method of claim 1 wherein said first end of said tube is sealed after gathering the excess material of said first end.

3. The method of claim 1 wherein said evacuating step includes gathering said second end of said tube around a vacuum, evacuating means.

4. The method of claim 1 wherein said tube is cut to said predetermined length from a continuous length of tube material.

5. A method of packaging a mattress assembly constructed of coil springs wherein each spring is contained within an individual pocket of fabric, comprising the steps of:

providing a tube of deformable material, said tube having a predetermined length;

inserting a mattress assembly constructed of pocketed coil springs into said tube, said mattress assembly having a length which is less than the length of said tube, thereby defining first and second tube ends of excess material;

sealing a first end of said tube;

evacuating air from said tube through said second end thereby deforming said tube around said mattress assembly and causing said mattress assembly to compress;

sealing said second end of said tube after evacuating said tube to a predetermined state;

inserting said evacuated tube into a containment sleeve which is dimensioned and configured to retain said compressed mattress assembly in a compressed state for shipment;

removing said evacuated tube from said containment sleeve; and

allowing said mattress assembly in said tube to gradually return to an uncompressed state.

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6. A method of packaging a mattress assembly constructed of coil springs wherein each spring is contained within an individual pocket of fabric, comprising the steps of:
providing a tube of deformable material, said tube having a predetermined length;

inserting a mattress assembly constructed of pocketed coil springs into said tube, said mattress assembly having a length which is less than the length of said tube, thereby defining first and second tube ends of excess material; sealing a first end of said tube;

evacuating air from said tube through said second end thereby deforming said tube around said mattress assembly and causing said mattress assembly to compress;

sealing said second end of said tube while said tube is being evacuated to a predetermined state;

inserting said evacuated tube into a containment sleeve which is dimensioned and configured to retain said compressed mattress assembly in a compressed state for shipment;

removing said evacuated tube from said containment sleeve; and

allowing said mattress assembly in said tube to gradually return to an uncompressed state.

7. A method of packaging a mattress assembly constructed of coil springs wherein each spring is contained within an individual pocket of fabric, comprising the steps of:

providing a tube of deformable material, said tube having a predetermined length;

inserting a mattress assembly constructed of pocketed coil springs into said tube, said mattress assembly having a length which is less than the length of said tube, thereby defining first and second tube ends of excess material; sealing a first end of said tube;

evacuating air from said tube through said second end thereby deforming said tube around said mattress assembly and causing said mattress assembly to compress;

inserting said evacuated tube into a containment sleeve which is dimensioned and configured to retain said compressed mattress assembly in a compressed state for shipment;

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removing said evacuated tube from said containment sleeve; and

allowing said mattress assembly in said tube to gradually return to an uncompressed state; and

said evacuated tube is punctured to allow said mattress assembly in said tube to gradually return to said uncompressed state.

8. A method of packaging a mattress assembly constructed of coil springs wherein each spring is contained within an individual pocket of fabric, comprising the steps of:

providing a tube of deformable material, said tube having a predetermined length;

inserting a mattress assembly constructed of pocketed coil springs into said tube, said mattress assembly having a length which is less than the length of said tube, thereby defining first and second tube ends of excess material;

sealing a first end of said tube;

evacuating air from said tube through said second end thereby deforming said tube around said mattress assembly and causing said mattress assembly to compress;

inserting said evacuated tube into a containment sleeve which is dimensioned and configured to retain said compressed mattress assembly in a compressed state for shipment;

removing said evacuated tube from said containment sleeve;

allowing said mattress assembly in said tube to gradually return to an uncompressed state; and

said containment sleeve is severed to allow said mattress assembly in said tube to gradually return to said uncompressed state.

9. The method of claim 1 wherein said evacuated tube inserted into said containment sleeve is allowed to expand within said containment sleeve.

* * * * *

EXHIBIT 2

**Zinus, Inc. v. Simmons Bedding Co., et al.
Case No. 07-CV-03012-PVT**

Exh 2.txt

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION
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6 ZINUS, INC.,
7 a California corporation,
8 Plaintiff,
9 vs. Case No. 07-CV-03012 PVT
10 SIMMONS BEDDING COMPANY,
11 a Delaware corporation,
12 and DREAMWELL, LTD., a
13 limited liability company
14 of Nevada,
15 Defendants,
16 AND RELATED COUNTERCLAIMS. /
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20 DEPOSITION OF SCOTT REEVES
21 THURSDAY, NOVEMBER 15, 2007
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23 PAGES 1 to 65
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1 A P P E A R A N C E S

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4 FOR PLAINTIFF:

5 IMPERIUM PATENT WORKS

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24

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Exh 2.txt

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I N D E X

EXAMINATION BY:	PAGE
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201 Declaration of Scott Reeves in support of Zinus, Inc.'s motion for summary adjudication of noninfringement	9
202 Exhibit R-A and figure 1	26
203 Exhibit R-B and figure 2	28
204 Exhibit R-C and figure 3	29
205 Exhibit R-D and figure 4	30
206 Exhibit R-E and figure 5	34
207 Exhibit R-F and figure 6	37
208 Document production No. P 002000	46
209 Document production Nos. P 002001 and 2002	49
210 Document production No. P 002010	53
211 Document production No. P 002019	57

Exh 2.txt

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1 BE IT REMEMBERED that pursuant to Notice, and
2 on Thursday, November 15, 2007, commencing at the hour
3 of 4:00 p.m. thereof, at Four Embarcadero Center, San
4 Francisco, California, before me, LOUISE MARIE
5 SOUSOURES, a Certified Shorthand Reporter, there
6 personally appeared:

7 SCOTT REEVES,
8 called as a witness by the Defendants, and who, being
9 first duly sworn, was thereupon examined and testified
10 as hereinafter set forth:

11 EXAMINATION BY MR. WILSON:

12 Q. Would you please state your full name for the
13 record?

14 A. Scott Philip Reeves.

15 Q. Where do you live, Mr. Reeves, just the city?

16 A. Pleasanton, California.

17 Q. Where do you work?

18 A. Pleasanton, California.

19 Q. What company do you work for?

20 A. Zinus.

21 Q. Zinus, is there a corporate name?

22 A. Zinus, Inc.

23 Q. How long have you worked at Zinus, Inc.?

24 A. Four years.

25 Q. Were you a founder of Zinus, Inc.?

Exh 2.txt

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1 A. No.

2 Q. What is your title for Zinus, Inc.?

3 A. President.

4 Q. How long have you been the president there?

5 A. Four years.

6 Q. Prior to starting your work for Zinus, Inc.

7 four years ago, did you work for any predecessor or

8 affiliate company of Zinus?

9 A. I don't know how to answer that. We worked
10 for -- predecessor company, but that Zinus was invested
11 in named NorthPole. I wasn't sure how to answer that.

12 Q. That's all right. I would have got there
13 anyhow, a quicker way to do it.

14 When did you work at NorthPole?

15 A. April of '99 to July 1st, 2003.

16 Q. Was NorthPole in the mattress business?

17 A. No.

18 Q. Is there more than one company that bears the
19 Zinus name, to your knowledge? You look a little
20 confused so let me ask it a little bit differently.

21 I see reference sometimes to Zinus U.S. and
22 Zinus China.

23 Are they separate companies?

24 A. Separate, separate companies owned by Zinus

Exh 2.txt

25 Korea.

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1 They're one hundred percent subsidiaries of
2 Zinus Korea.

3 Q. Have you ever had your deposition taken before?

4 A. Yes.

5 Q. How many times?

6 A. Once.

7 Q. About how long ago?

8 A. I don't recall exactly, but approximately five
9 years ago.

10 Q. Do you recall generally the context in which
11 your deposition was taken, what kind of matter?

12 A. A trademark matter, I believe.

13 Q. Were you a party to the case?

14 A. Our company was.

15 Q. Was that while you were working at NorthPole?

16 A. Yes.

17 Q. Well, since you've already got a little
18 experience in depositions, I won't bore you with too
19 much detail of the process, but there are a couple
20 things I would like to go over with you.

21 First off is I need you to make sure you listen
22 to the question and answer the question that's being
23 asked.

24 Can you do that? Exh 2.txt

25 A. Sure.

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1 Q. You'll need to answer the questions audibly,
2 you've been doing quite well at that so far, but it's
3 difficult for the court reporter to pick up a shake or
4 nod of the head.

5 Do you understand?

6 A. Yes.

7 Q. You need to try not to step on my questions and
8 I'll try to do the same with respect to your answers,
9 because once again, the court reporter can't transcribe
10 when both of us are talking at the same time.

11 Do you understand that?

12 A. Yes.

13 Q. If I ask you a question and you don't
14 understand what I'm asking you, don't be shy about
15 letting me know that you don't understand and asking me
16 to clarify the question.

17 I may ask you what it is you don't understand,
18 but it's important that you let me know if you don't
19 understand the question, because otherwise, if you
20 answer it, it will appear on the transcript as though
21 you do understand the question.

22 Does that make sense to you?

Exh 2.txt

23 A. Yes, it does.

24 Q. If you need a break for any reason, let me

25 know, need to stretch your legs, not feeling well, need

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1 a drink of water, whatever it is, we have water here,
2 but if you need a break for any reason, let me know and
3 we'll take it.

4 I only ask that unless it's absolutely
5 necessary you don't break while a question is pending.

6 Do you understand that?

7 A. Yes.

8 Q. Do you understand that you've been designated
9 to testify on behalf of the company as a company
10 representative for this deposition today?

11 A. Yes.

12 Q. So you're testifying in your individual
13 capacity but also as a corporate designee.

14 Do you understand that?

15 A. Yes.

16 Q. Do you understand that you have been designated
17 to testify on particular topics?

18 A. Yes.

19 Q. Do you understand that one of those topics is
20 the process or processes for packaging the swirl wrap
21 product?

Exh 2.txt

22 A. Yes.

23 Q. Are you prepared to testify regarding all
24 information known or reasonably available to Zinus on
25 the subject of processes or packaging the Swirl Wrap

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1 product?

2 A. Yes.

3 Q. Do you understand one of the other topics
4 you've been designated to testify on is the
5 circumstances surrounding the decision to move to the
6 Swirl Wrap process?

7 A. Yes.

8 Q. Are you prepared to testify regarding all
9 information known or reasonably available to Zinus on
10 that topic?

11 A. Yes.

12 MR. WILSON: I'd like to have marked as
13 Exhibit 201 -- Darien, so you understand, I think it
14 makes sense since we're a defendant to start with later
15 numbered exhibits. That way we can number our exhibits
16 sequentially through the case.

17 I'll start with 201, I'll give you 1 to 200. I
18 don't think you'll need that many during the case, but
19 that way we will at least have a consistent numbering
20 scheme.

Exh 2.txt
21 I would like to have marked as Exhibit 201 a
22 document entitled "Declaration of Scott Reeves in
23 support of Zinus, Inc.'s motion for summary adjudication
24 of noninfringement."
25 (Exhibit No. 201 was marked.)

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1 BY MR. WILSON:
2 Q. Do you recognize this document? Take your time
3 to look at it to make sure.
4 A. Yes.
5 Q. What do you recognize this as?
6 A. My declaration of facts surrounding Swirl Wrap,
7 packaging method thereof.
8 Q. Now, I'd like you to take a look at page 5, if
9 you would, final page.
10 Is that your signature?
11 A. Yes, it is.
12 Q. And did you execute this document on or about
13 September 29th, 2007?
14 A. It appears I had.
15 Q. I note that the exhibits, there were exhibits
16 to this declaration when you signed it, correct?
17 A. I believe so.
18 Q. Photographs? Does --
19 A. Yes.

Exh 2.txt

20 Q. And they aren't attached to this document. We
21 will look at those, but just for recordkeeping, it
22 seemed easier.
23 Other than that, this looks like the
24 declaration you signed, right?
25 A. Yeah.

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1 Q. Did you draft this declaration yourself?
2 A. Not the legalese, but the contents.
3 Q. Does Zinus sell a product that it refers to as
4 the Swirl Wrap product?
5 A. How do you define sell?
6 Q. Offer it to customers who pay you money.
7 A. Yes.
8 Q. Does Zinus package the product using the Swirl
9 Wrap name?
10 A. No, we don't package the product using the
11 Swirl Wrap name. We introduce it as Swirl Wrap
12 packaging method.
13 Q. When you say you introduce it as Swirl Wrap
14 packaging method, you introduce it to who?
15 A. To customers like Wal-Mart specifically with
16 hopes of soliciting a large volume order.
17 Q. Is the name on the packaging of the product
18 called Mattress-in-a-Box?

Exh 2.txt

19 A. Real Mattress-in-a-Box.

20 Q. How long has Zinus sold a product by the name
21 of Real Mattress-in-a-Box?

22 A. With that brand name, my best estimation is
23 probably a year plus, but not much more over a year.
24 Selling a Mattress-in-a-Box, longer than a
25 year.

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1 Q. Now, I'm not going to ask you about the product
2 more than a year old because this deposition is limited
3 to the Swirl Wrap product.

4 I will ask you from time to time some questions
5 just to put the Swirl Wrap product in context and I'll
6 probably do a little bit of that right now.

7 Is the Real Mattress-in-a-Box product you're
8 selling now different in any way than the Real
9 Mattress-in-a-Box product you were selling a year ago?

10 A. No.

11 Q. Is the Real Mattress-in-a-Box product that
12 you're selling now manufactured or packaged in a
13 different way than the Real Mattress-in-a-Box product
14 that you were selling a year ago?

15 A. We have a new method of packaging, which we
16 call Swirl Wrap.

17 We don't just manufacture spring mattresses.

Exh 2.txt

18 We manufacture foam mattresses, we manufacture
19 air mattresses and we manufacture spring mattresses.

20 So we manufacture three different types of
21 mattresses all of which we package in a box, some we
22 don't.

23 Q. Do you sell all three types of those mattresses
24 under the name Real Mattress-in-a-Box?

25 A. We try to, yes.

12

♀

1 Q. Is there any difference in the way that you
2 manufacture or package the spring mattress version of
3 Mattress-in-a-Box today as opposed to how you
4 manufactured or packaged the Real Mattress-in-a-Box
5 spring mattress product a year ago?

6 A. In the United States, yes.

7 Q. What is that difference?

8 A. That difference is what we call swirl wrap and
9 the difference comes from wrapping our mattress onto a
10 sheet of film, in other words, rolling it up and then
11 banding it to hold it in place.

12 Q. How does the Swirl Wrap process differ from the
13 previous process that was used on the spring mattress
14 Real Mattress-in-a-Box products?

15 A. We do not put it into a PE, polyethylene,
16 duffel bag.

Exh 2.txt

17 Q. Let me make sure I understand.

18 Is it accurate to say in the spring mattress
19 version of the Real Mattress-in-a-Box product that you
20 were selling a year ago, that product was put into a
21 polyethylene -- what was the word you used?

22 A. Duffel bag.

23 Q. Duffel bag as part of the packaging process?

24 A. I'm sorry, repeat that, Ken.

25 Q. Sure. In the version of the -- strike that.

13

♀

1 In the spring mattress version of the Real
2 Mattress-in-a-Box product that you were selling a year
3 ago, is it fair to say that you packaged that product in
4 part by putting it into a polyethylene duffel bag?

5 A. We did initially.

6 Q. Is it accurate to say that Zinus has now
7 replaced that step with what you referred to as a Swirl
8 Wrap process?

9 A. Correct.

10 Q. I understand that you have disclosed to
11 Wal-Mart that you've changed the process for packaging
12 the product; is that right?

13 A. That's correct.

14 Q. Is there anyone else to whom you have specified
15 that you packaged the Mattress-in-a-Box product using a

Exh 2.txt

16 Swirl wrap process?

17 A. Is your question have we introduced that Swirl
18 wrap process to any other customers?

19 Q. My question is: Do you use the term -- do you
20 call out that the product is manufactured or packaged
21 using a Swirl wrap process to anybody other than
22 Wal-Mart?

23 A. No. This process was designed for Wal-Mart.

24 Q. And why was this process designed for Wal-Mart?

25 A. Because that's our sales strategy for this

14

♀

1 product. They're the first customer and the major
2 customer we're soliciting the sales to.

3 Q. Do you have other customers right now that
4 you're soliciting sales to of the Swirl wrap packaged
5 product?

6 A. No. No, no.

7 Q. I'd like you, if you would, to take a look at
8 paragraph 3 of your declaration.

9 I'll tell you what I'm going to do. I'm going
10 to cover paragraphs 3 through 6 and do them one-by-one
11 but essentially going to ask you for each of them, so
12 you can look at them with this in mind, whether those
13 steps are the same in the Swirl wrap process as they
14 were in what I'll refer to as the original process.

Exh 2.txt

15 A. Okay.

16 Q. If I talk about the original process, will you
17 understand that to mean the process that you used for
18 packaging the spring mattress version of the Real
19 Mattress-in-a-Box product a year ago before you adopted
20 the Swirl Wrap?

21 A. Yes.

22 Q. Okay. So I'd like you, if you would, to take a
23 look at paragraph 3 of your declaration.

24 A. Uh-huh.

25 Q. My question is: Is the steps set forth in

15

7

1 paragraph 3 the same in the Swirl Wrap process as it was
2 in the original process for the Real Mattress-in-a-Box
3 product?

4 A. Correct.

5 Q. Take a look at paragraph 4, please. Is the
6 steps set forth in paragraph 4 of your declaration the
7 same in the Swirl Wrap process as it was in the original
8 Real Mattress-in-a-Box process?

9 A. Correct.

10 Q. In paragraph 5, is that step in the Swirl Wrap
11 process the same as it was in the original Real
12 Mattress-in-a-Box process?

13 A. Correct.

Exh 2.txt

14 Q. Finally, on paragraph -- with respect to
15 paragraph 6, is the process set forth in that paragraph
16 the same in the Swirl Wrap version of the product as it
17 was in the original process for the Real
18 Mattress-in-a-Box?

19 A. Point number 6 is correct.

20 Q. Now, I'd like you to look at paragraph 7.

21 Is the steps set forth in paragraph 7 the same
22 in the Swirl Wrap process as it was in the original Real
23 Mattress-in-a-Box process?

24 A. No.

25 Q. What is the purpose of the steps set forth in

16

♀

1 paragraph 7, namely putting the compressed mattress on a
2 rectangular sheet of colored flexible film?

3 A. I'd have to -- can we go to number 8?

4 Q. Sure.

5 A. It really is -- number 8 is maybe more
6 explanatory about that. Setting it on the flat film
7 does not explain the process, but Swirl Wrap process is
8 taking the compressed mattress, laying it down on the
9 film, and then rolling it up together with the film and
10 banding it.

11 And that part is different than the original
12 way of packaging.

Exh 2.txt
13 Q. So paragraphs 7, 8 and 9 are different?
14 A. Yeah. Yes.
15 Q. Why did Zinus move to Swirl Wrap process?
16 A. Two reasons, I think, maybe more, but the first
17 one is that our customer asked us to come up with a way
18 to obviously go around any conflict with any possible
19 patent.
20 The second one is that we found that this
21 process is one where it is cost efficient and stronger
22 in containing the roll-up of the mattress.
23 And this inspiration we got actually from Magni
24 which was, I believe, an Italian company some years ago
25 or Spain or Italy.

17

♀

1 Q. Prior to -- let me back up for a second.
2 what do you mean when you refer to containing
3 the roll-up of the mattress?
4 A. Holding it together when it's rolled up.
5 Q. Prior to adopting the Swirl Wrap process, was
6 Zinus having a problem with containing or holding the
7 roll-up of the mattress in the original version of the
8 Real Mattress-in-a-Box product?
9 A. From time to time, it would bulge.
10 Q. When you say it would bulge, what are you
11 referring to?

Exh 2.txt

12 A. It would want to expand itself.

13 Q. Now, as I understand it, the product at that
14 time was in a polyethylene duffel bag?

15 A. That's correct.

16 Q. Would it try to expand itself beyond the
17 boundaries of the polyethylene duffel bag?

18 A. Sometimes that bag would rip.

19 Q. What was the purpose of the polyethylene duffel
20 bag?

21 A. To hold the product in place.

22 Q. Was a purpose of the polyethylene duffel bag to
23 contain the roll-up, stop it from expanding?

24 A. Part of it, yes, the plastic that it was
25 compressed in would also help in holding it, so they

18

♀

1 worked in concert with one another.

2 Q. When you talk about the plastic it was
3 compressed in, are you referring to what you described
4 as the sheath in your declaration?

5 A. Yes, the sandwich bag.

6 Q. What causes the Real Mattress-in-a-Box product
7 to expand when it's in its sheath?

8 A. It -- I'm not sure technically, but I believe
9 it's the springs wanting just to uncompress themselves
10 from time to time.

Exh 2.txt

11 Q. That's as a result of the fact that you have
12 springs that in their normal state are at a certain
13 height and they're pushed down to a lower height than
14 their natural height so they naturally want to expand
15 back to their original or near their original height,
16 right?

17 A. Yes, and we compress it by pushing it down into
18 that state and then holding it there inside the sandwich
19 sheath.

20 Q. Is it fair to say, though, until the compressed
21 mattress is removed from its sheath, it tends to want to
22 expand?

23 A. No. I mean it will not want to expand
24 completely. It will just want to naturally, to some
25 extent, expand.

19

♀

1 Q. Is the use of the what you refer to as the
2 flexible film and the tape or bands designed to limit
3 the ability of the compressed mattress to expand?

4 A. Correct.

5 Q. Is it -- is the combination of the film and the
6 tape or the bands effective in limiting the ability of
7 the compressed mattress to expand?

8 A. Yes.

9 Q. Can you explain how the combination of the

Exh 2.txt

10 flexible film and the bands or the tape limits the
11 ability of the compressed mattress to expand?

12 A. Yes. The compressed mattress, while rolled up
13 onto the what you call flexible film, that flexible film
14 is actually reinforced, it is a woven material.

15 So it is a very strong film, yet flexible.

16 So as you roll that mattress continuously until
17 such time as it's completely rolled, you now have all
18 those layers of that reinforced flexible film material
19 holding that mattress together, not allowing it to
20 expand.

21 And then you combine that with reinforced
22 taping that goes across the product.

23 The combination of those two elements gives us
24 a very stable product.

25 Q. When you say a very stable product, what are

20

♀

1 you referring to?

2 A. One that will not expand.

3 Q. What material is used for the -- by the way, I
4 use the term flexible film because it's what is used in
5 the declaration.

6 Is there another term you use to describe the
7 material that the mattress is placed on?

8 A. We can refer to it as flexible film if you

Exh 2.txt

9 prefer.

10 It's also referred to as polyethylene,
11 reinforced polyethylene.

12 Q. Is that the material that it's made out of,
13 polyethylene?

14 A. Yes.

15 Q. Why does Zinus use a rectangular sheet of
16 flexible film?

17 A. Mattress is rectangular so that shape works
18 best in the manufacturing process.

19 Q. Is the rectangular sheet of flexible film --
20 strike that.

21 How wide is the rectangular sheet of flexible
22 film when compared to the mattress?

23 A. I don't think I can answer that honestly, but
24 it's going to -- my best guess is it's the same --
25 slightly wider than the mattress, but I can't tell you

21

♀

1 specifically.

2 Q. Is it roughly the same size as the mattress?

3 A. No, it would be longer than the mattress.

4 Q. I'm sorry, is it roughly the same width as the
5 mattress?

6 A. It would be a little bit wider than the
7 mattress.

Exh 2.txt

8 Q. why is the rectangular flexible film a little
9 bit wider than the mattress?

10 A. For some room.

11 Q. Does a rectangular sheet of plastic or flexible
12 film that is slightly wider than the mattress assist in
13 preventing the compressed mattress from expanding when
14 it's rolled up?

15 A. Oh, I have no engineering testing data to say
16 that it does, so I can't answer that accurately, but I
17 would say that it would only in the fact that it would
18 give us some tolerance to make sure that Swirl wrap is
19 connecting or holding the entire mattress in its width.

20 Q. Let me ask you this: In the -- in paragraph 9
21 of your declaration, you referred to ribbon-shaped
22 bands?

23 A. Yes.

24 Q. Do you see that?

25 A. Yes, I do.

22

7

1 Q. When you refer to ribbon-shaped bands, what are
2 you talking about? what do you mean?

3 A. Reinforced bands that are -- you've seen the
4 strapping material on packaging before, that's a
5 reinforced band.

6 Q. When you say it's ribbon-shaped, do you mean it

Exh 2.txt
7 is significantly longer than it is wide?
8 A. Yes.
9 Q. Would you say that the rectangular sheet of
10 flexible film is ribbon-shaped?
11 A. Under that definition, the flexible film is
12 longer than it is wide.
13 Q. But in your understanding of the term
14 ribbon-shaped -- I mean I note you didn't use the term
15 ribbon-shaped when you described the rectangular sheet
16 although you did use it when you described the bands.
17 Was there a reason?
18 A. Well, strapping material is ribbon-shaped
19 strapping material.
20 Q. If you had a rectangular sheet of flexible film
21 that was dimensionally the same as the narrow
22 ribbon-shaped bands, in other words, the dimensions of
23 width to length were similar for the rectangular sheet,
24 would it hold as well as the dimensions of the sheet
25 that you, in fact, use?

23

1 A. I don't understand that question at all.
2 Q. Okay. It's fair to say, isn't it, that the
3 rectangular film that the mattress is rolled up in is
4 significantly wider compared to the length of the film
5 than the ribbon-shaped bands are wide compared to the

Exh 2.txt

6 length of the bands?

7 A. No, I didn't say that.

8 I said that the film, flexible film is slightly
9 wider than the mattress itself and it is longer than the
10 mattress is the way I defined the flexible film.

11 Q. Okay. Okay. When you used the term
12 ribbon-shaped in paragraph 9, what were you thinking of
13 as a definition? What did you understand that term to
14 mean?

15 A. Reinforced ribbon straps, so these would be
16 straps that would go around the circumference of the
17 swirl wrapped product and part of that method of
18 packaging that would help combine in holding everything
19 in one place.

20 Does that answer?

21 Q. I think so. Let me just try to close the loop
22 here. I may have asked this and I apologize if I did.

23 Based on your understanding of the term
24 ribbon-shaped, do you consider the flexible film to be
25 ribbon-shaped?

24

7

1 A. No.

2 Q. Has -- let me ask you this: Why is the
3 rectangular sheet of flexible film colored?

4 A. It does not have to be colored. It can be

Exh 2.txt
5 colored, but it doesn't have to be colored.

6 Q. Did Zinus originally choose to use colored
7 flexible film for design and marketing reasons?

8 A. Initially, it was a thought.

9 Q. Has -- strike that.

10 Did Zinus use the step described in paragraph 7
11 of your declaration for all of the Swirl Wrap Real
12 Mattress-in-a-Box products that were made by Zinus up to
13 the date you signed this declaration?

14 A. I'm sorry, Ken, can you repeat that?

15 Q. That's okay, absolutely.

16 Was the step set forth in paragraph 7 used in
17 the manufacture of all Swirl Wrap products manufactured
18 by Zinus up to the date that you signed your declaration
19 on September 29th?

20 A. Yes.

21 Q. Now, I'm going to ask you a couple questions
22 about paragraph 8.

23 It says that the compressed mattress and the
24 flexible film are rolled together to form a cylindrical
25 rolled-up mattress assembly.

25

1 How are they rolled up?

2 A. By hand and subsequently and most recently
3 we've invested in new machinery to assist us in mass

Exh 2.txt
4 producing this process packaging method.

5 Q. As of the time that your declaration was filed
6 with the Court, had you used any process other than
7 manually rolling up the mattresses as part of the swirl
8 wrap process?

9 A. In no packaging method have we used any other
10 method other than manually rolling. We've always
11 manually rolled.

12 Q. Is the -- is the use of a machine to roll up
13 the mattress something that's contemplated in the
14 future?

15 A. Yes.

16 MR. WILSON: I'd like to have marked as
17 Exhibit 202 a document, first page of which says
18 Exhibit R-A, and the second page of which says figure 1.

19 (Exhibit No. 202 was marked.)

20 BY MR. WILSON:

21 Q. Do you recognize Exhibit 202?

22 A. Yes.

23 Q. Was Exhibit 202 one of the exhibits to your
24 declaration? I'm going to help you out, not trying to
25 trick you.

26

1 A. Yeah. I don't have those exhibits with me.

2 Q. You see in paragraph 8 of your declaration, it

Exh 2.txt

3 says attached as Exhibit R-A through R-D?

4 A. Yes.

5 Q. Does that refresh your recollection that
6 Exhibit R-A was attached to your declaration?

7 A. Yes.

8 Q. Does Exhibit R-A accurately depict the first
9 step of the Swirl Wrap portion of the packaging process
10 up to the date you signed your declaration? In other
11 words, placing a piece of flexible film on the ground?

12 A. Yeah, but that wasn't the first step on the
13 declaration.

14 Q. Okay.

15 A. Yeah.

16 Q. I didn't mean to -- again, I'm not trying --
17 trust me when I say I'm not trying to trick you when I
18 ask these questions.

19 A. I'm trying to be careful, Ken.

20 Q. I appreciate that.

21 Is it fair to say that figure 1 accurately
22 depicts the first step of the new portion of the process
23 that exists in the Swirl Wrap packaging, but not in the
24 original manufacturing process?

25 A. Correct.

27

7

1 MR. WILSON: I'd like to have marked as

Exh 2.txt

2 Exhibit 203 a document, first page of which says
3 Exhibit R-B, the second page of which says figure 2.
4 (Exhibit No. 203 was marked.)

5 BY MR. WILSON:

6 Q. Does -- do you recognize Exhibit 203?
7 A. Yes.

8 Q. Does Exhibit 203 and figure 2 in particular
9 accurately depict the second step of the new portion of
10 the swirl wrap process, namely putting the compressed
11 mattress onto the flexible film?
12 A. Yes.

13 Q. And from this step, the compressed mattress is
14 then rolled up into the flexible film, correct?
15 A. Yes.

16 Q. How does the -- how does the compressed
17 mattress get onto the flexible film?
18 A. Manually.

19 Q. People put it onto the flexible film?
20 A. Yes.

21 Q. When Zinus uses the combination of flexible
22 film and tape to limit the expansion of the compressed
23 rolled-up mattress, does it use the tape in the manner
24 depicted in Exhibit 203, namely, the tape is attached to
25 the flexible film on one side before the mattress is

Exh 2.txt

1 rolled up?

2 A. This is one way in which we do it.

3 Another way in which we do it is we roll up the
4 compressed mattress on the flexible film and then strap
5 the adhesive tape around the circumference of the swirl
6 wrapped product.

7 Q. So you do it sometimes -- Zinus sometimes
8 applies the tape in the manner depicted in Exhibit 203
9 and other times applies the adhesive tape after the
10 mattress is rolled into the flexible film, correct?

11 A. Yes, during this time, yes.

12 MR. WILSON: I'd like to have marked as
13 Exhibit 204 a document, first page of which says
14 Exhibit R-C, second page of which says figure 3.

15 (Exhibit No. 204 was marked.)

16 BY MR. WILSON:

17 Q. Do you recognize Exhibit 204?

18 A. Yes.

19 Q. Is Exhibit 204 an exhibit to your declaration?

20 A. Yes.

21 Q. Does Exhibit 204 accurately depict the manner
22 in which the compressed mattress was rolled into
23 flexible film as part of the swirl wrap process up to
24 the date you signed your declaration?

25 A. Correct.

29

Exh 2.txt

1 MR. WILSON: I'd like to have marked as
2 Exhibit 205 a document, first page of which is -- says
3 Exhibit R-D, the second page of which says figure 4.

4 (Exhibit No. 205 was marked.)

5 BY MR. WILSON:

6 Q. Do you recognize Exhibit 205?

7 A. Yes, I do.

8 Q. Was Exhibit 205 a declaration -- strike that.

9 Was Exhibit 205 an exhibit to your declaration?

10 A. I believe it was.

11 Q. Does Exhibit 205 accurately depict the process
12 for rolling up the compressed mattress into the flexible
13 film up to the date in which you signed your
14 declaration?

15 A. Correct.

16 Q. And to be clear, that process involved manually
17 rolling up the mattress in the flexible film that was
18 slightly wider than the mattress? That's the question.

19 A. To answer that question, yes.

20 Q. I'd like now to go back to your declaration,
21 I want to talk to you for a couple minutes about
22 paragraph 9.

23 What do you mean -- strike that.

24 In the first sentence, paragraph 9, it refers
25 to using the ribbon-shaped bands to hold the roll in

30

Exh 2.txt

1 place.

2 what did you mean by that?

3 A. To hold the Swirl wrap in place.

4 Q. Did that mean to -- to limit the compressed
5 mattress from expanding after it was rolled up?

6 A. That's correct, both the flexible film that's
7 reinforced and the strapping material combined together
8 to give us a strong hold on that mattress.

9 Q. Why did Zinus choose to use ribbon-shaped bands
10 as opposed to some other shape?

11 A. As in any manufacturing new design method of
12 packaging, you experiment and we found the reinforced
13 plastic strapping to work best for the purpose that we
14 had in mind.

15 Q. And in a few minutes I'll talk to you about the
16 experimenting because I'm interested in that as well.

17 Did you understand the adhesive tape to be a
18 form of ribbon-shaped band? I'm not trying to trick you
19 here.

20 I notice that in the second sentence of that
21 paragraph, you say in one example, the ribbon-shaped
22 bands are strips of adhesive tape?

23 A. Yes.

24 Q. When Zinus used ribbon-shaped tape in
25 conjunction with the flexible film to limit or prevent

31

Exh 2.txt

1 the compressed mattress from expanding, did it use
2 strips of tape that surround it, went entirely around
3 the circumference of the rolled-up mattress?

4 A. Correct.

5 Q. Did Zinus ever use strips of adhesive tape that
6 did not go around the entire circumference of the
7 rolled-up mattress?

8 A. If they did, I was not aware.

9 Q. So when you reference ribbon-shaped bands here,
10 what you understood to be used was strips of tape that
11 went around the entire --

12 A. Circumference.

13 Q. How many ribbon-shaped strips of adhesive tape
14 would be used on an individual mattress?

15 A. Ken, that would be dependent upon a style or
16 type of mattress.

17 So it could be three or it could be more,
18 depending upon what style, what thickness mattress we
19 were manufacturing.

20 Q. Why was the tape of the ribbon-shaped bands
21 wrapped circumferentially around the rolled-up mattress?

22 A. Swirl wrap is a roll, it's rolled up so you
23 need something to hold the total circumference.

24 Q. Was the reason that the ribbon-shaped bands
25 were wrapped circumferentially around the rolled-up

Exh 2.txt

¶

1 mattress assembly because you believed that was the most
2 effective way to limit the expansion of the compressed
3 mattress?

4 A. Correct.

5 Q. I maybe asked you this earlier, but in the
6 original mattress -- strike that.

7 In the original Real Mattress-in-a-Box product,
8 was the purpose of the polyethylene duffel bag to limit
9 or prevent the expansion of the compressed mattress?

10 A. Correct.

11 Q. What would happen if Zinus attempted to ship
12 the Mattress-in-a-Box product by placing it in a box but
13 without the flexible film and without tape to hold the
14 roll?

15 A. It would expand itself naturally.

16 It could be -- at some point in time, during
17 the shipping process, it could -- that plastic sandwich
18 bag that is now sealed that's compressed the mattress
19 could puncture which would allow -- which would make it
20 expand itself and we don't puncture the mattress.

21 Q. Could the -- strike that.

22 If the Real Mattress-in-a-Box product was
23 rolled up and put in a box without flexible film and
24 tape or some other system to limit or restrain the
25 expansion of the compressed mattress, would it impact

Exh 2.txt

♀

1 the ability of the box to withstand shipping?

2 A. Probably so.

3 Q. Might break the box, right?

4 A. Could break the box.

5 MR. WILSON: I'd like to have marked as
6 Exhibit 206 a document, the first page of which says
7 Exhibit R-E and second page of which says figure 5.

8 (Exhibit No. 206 was marked.)

9 BY MR. WILSON:

10 Q. Do you recognize Exhibit 206?

11 A. Can I stop you?

12 Q. Absolutely.

13 A. And go back to that last question?

14 Q. Sure.

15 A. Because I think it's important.

16 Q. Okay.

17 A. If we compress the mattress in its plastic
18 sandwich bag, seal it like we're currently doing, and
19 roll it up and tape it tightly shut, and place it in the
20 box, it would not damage the box on its own.

21 It could potentially expand itself if that
22 plastic bag was punctured and that's what we're trying
23 to limit during time of shipping from the factory to the
24 time it gets to the stores and consumer's home, we want
25 to make sure that bed stays nice and contained and

Exh 2.txt

34

8

1 secured.

2 So I wanted to clarify that.

3 Q. Okay. Thank you.

4 Do you recognize Exhibit 206?

5 A. Yes.

6 Q. Was Exhibit 206 an exhibit to your declaration?

7 A. Yes.

8 Q. Does Exhibit 206 accurately depict a Swirl wrap
9 packaged Real Mattress-in-a-Box product which was
10 packaged using adhesive tape?

11 A. Yes.

12 Q. Do you have any estimate of how many Swirl wrap
13 packaged Mattress-in-a-Box products Zinus has made using
14 the adhesive tape method?

15 A. No. Numerous, but no, I don't know exactly how
16 many pieces.

17 Q. More than a hundred?

18 A. Less than a hundred.

19 Q. Do you have an estimate of how many
20 Mattress-in-a-Box products Zinus has made using the
21 Swirl wrap process and ribbon-shaped bands other than
22 adhesive tape?

23 A. Numerous and maybe more than a hundred.

24 Q. Is Wal-Mart currently selling Mattress-in-a-Box
25 product?

Exh 2.txt

35

8

1 A. No.

2 Q. Are you aware of whether Wal-Mart is currently
3 advertising Mattress-in-a-Box product on its web site?

4 A. No.

5 I'm not sure if walmart.com, if they did, I'm
6 not sure if they do any longer.

7 Q. If walmart.com was offering for sale a Real
8 Mattress-in-a-Box product today, would that product be a
9 product manufactured using the original process or using
10 Swirl Wrap process?

11 A. If it was a coil, end pocket style mattress, we
12 would be doing it in Swirl Wrap.

13 If it was any of our other types of mattresses,
14 such as foam or air, we would be doing it in our
15 different, original style.

16 MR. WILSON: Let's go off the record for a
17 second.

18 (Off record discussion.)

19 MR. WILSON: Back on the record.

20 BY MR. WILSON:

21 Q. I'd like to take a look at paragraph 10 of your
22 declaration.

23 Does paragraph 10 accurately describe a step
24 that is used, setting aside the reference to the
25 mattress as banded and rolled up -- let me ask you a

Exh 2.txt

36

8

1 better question.

2 See how paragraph 10 describes a process of
3 putting the rolled-up mattress assembly into a cardboard
4 packing box?

5 A. Yes.

6 Q. Is it accurate to say that in both the original
7 Mattress-in-a-Box process and in the Swirl Wrap
8 Mattress-in-a-Box process, the rolled-up mattress
9 assembly is placed into a cardboard packing box in the
10 manner described in paragraph 10?

11 A. Yes.

12 MR. WILSON: I'd like to have marked as
13 Exhibit 207 a document, first page of which says
14 Exhibit R-F, second page of which says figure 6.

15 (Exhibit No. 207 was marked.)

16 BY MR. WILSON:

17 Q. Do you recognize Exhibit 207?

18 A. Yes.

19 Q. Is Exhibit 207 an exhibit from your
20 declaration?

21 A. Yes.

22 Q. Does Exhibit 207 accurately depict the --
23 strike that. I'm not going to -- there's nothing to ask
24 about that.

Exh 2.txt

25 A. That's a tough one.

37

♀

1 Q. Do you have an understanding of what is meant
2 by the term sleeve?

3 A. Yes.

4 Q. What do you understand that term means?

5 A. Two open ends.

6 Q. Did you ever hear of the term sleeve used in
7 connection with a record album?

8 A. Yes.

9 Q. Those sleeves didn't have two open ends, did
10 they?

11 A. Right.

12 Q. Do you have an understanding of the term
13 containment sleeve?

14 A. No.

15 MR. WILSON: Let's go off the record for a
16 second.

17 (Recess taken 4:58 to 4:59.)

18 MR. WILSON: Back on the record.

19 BY MR. WILSON:

20 Q. Turn back to your declaration, Exhibit 201,
21 paragraph 12, just read through paragraph 12 and I'll
22 have a couple questions on that.

23 I guess the first question I have is in the
Page 39

Exh 2.txt

24 middle of the paragraph it refers to ribbon-shaped bands
25 being bands of durable plastic stripping. what are you

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1 referring to there, what type of material? Is it those
2 plastic bands you see wrapped around packages and boxes
3 sometimes?

4 A. Yeah, that's one of the meanings.

5 Q. I ask the question because in paragraph 16, I
6 just want to try to get clarity on this point, you'll
7 see at the end of paragraph 16, it says in some units
8 the ribbon-shaped bands are adhesive tape, in other
9 units the ribbon-shaped bands are bands of durable
10 plastic tape.

11 Is that an accurate statement?

12 A. Yes. Yeah. This is during the initial phase
13 of developing this packaging method.

14 Q. So, is it fair to say you used ribbon-shaped
15 bands of adhesive tape in some instance, durable plastic
16 tape in other instances and durable plastic stripping
17 that is not tape in other instances?

18 A. Durable plastic stripping or straps and
19 adhesive tape.

20 Q. So in the last sentence here, which of those
21 two categories do you understand durable plastic tape to
22 fall into or was that just kind of a --

Exh 2.txt

23 A. There's two processes.
24 One was the plastic strap as you reference and
25 the other one is the durable adhesive tape.

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1 Q. Okay.
2 A. That's what's meant.
3 Q. Okay. Can you describe how the ribbon-shaped
4 bands are placed around the mattress?
5 A. Manually today.
6 Going forward, through machinery.
7 Q. To apply the ribbon-shaped bands, is the
8 compressed and rolled-up mattress lifted?
9 A. Yes.
10 Q. Is it lifted so that it is perpendicular to the
11 ground?
12 A. More horizontal to the ground.
13 Q. Is it lifted off the ground?
14 A. Yes.
15 Q. Are both ends lifted off the ground to put the
16 straps on at the same time?
17 A. Yes.
18 Q. Is there any movement from side to side of the
19 compressed mattress --
20 A. No.
21 Q. How does Zinus ensure that the rolled-up

Exh 2.txt

22 mattress is stationary when the bands are applied?
23 A. The compressed mattress, while rolled up into
24 the swirl wrap or the flexible film, when we finish that
25 rolling process, it's immediately strapped by the same

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1 crew, team, that's rolled it up.
2 Once it's rolled, it's pretty tight.
3 Then the straps come in and put the final
4 securement around the circumference of the swirl wrap.
5 Q. Are the straps closed at the time they're
6 applied?
7 A. No.
8 Q. How are the straps closed?
9 A. Through the strapping method with a -- I don't
10 remember what you call that attachment piece.
11 Q. So is it fair to say that the compressed
12 rolled-up mattress is lifted and then the straps are
13 wrapped around the mattress?
14 A. Correct.
15 Q. They're wrapped around and pulled tight to
16 close, correct?
17 A. That's correct. That's correct.
18 Q. At line 8, paragraph 12, you see the reference,
19 it says "the bands are wrapped around the rolled-up
20 mattress such that there is significant frictional

Exh 2.txt

21 force."

22 What are you referring to when you talk about
23 the frictional force?

24 A. Holding. Like you just mentioned, we strap it
25 tight. So when we strap it tight, we're holding it

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1 tight.

2 That's the frictional force.

3 Q. Is there a reason that Zinus doesn't use the
4 straps or bands without the flexible film?

5 A. Yes. As I mentioned earlier in my deposition,
6 the reinforced flexible film adds to the strength of
7 ensuring our product will not be damaged in the course
8 of transportation and will get to the consumer's home in
9 the proper order.

10 Q. Okay. Does the flexible film assist in
11 resisting the frictional force created by the rolled-up
12 mattress in conjunction with the bands?

13 A. I guess I would say it would minimize the
14 frictional force, not help it.

15 Q. And when you say it would minimize the
16 frictional force, you mean the --

17 A. The reinforced flexible film combined together,
18 rolled up inside and together with the compressed
19 mattress.

Exh 2.txt

20 Q. Minimizes the frictional force by minimizing
21 the expansion capabilities?

22 A. Yes.

23 Q. I'd like you to take a look at paragraph 13.
24 when you use the second case described in
25 paragraph 13, where the mattress is compressed outside

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1 the United States, and then boxed in the United States,
2 is that a fair characterization of what is referred to
3 as the second case?

4 A. Yes.

5 Q. What is done, if anything, to the mattresses as
6 they're shipped from their -- the place where they're
7 compressed to the United States to prevent the bag, the
8 sheath from ripping due to the expansion of the
9 mattress?

10 A. Under that particular scenario, we would be
11 shipping those under a different method in the container
12 coming to the United States so that it would be coming
13 to our own facilities and anything that did expand in
14 the container, then we would recompress or sell in a
15 different manner.

16 Q. I'd like you to take a look at paragraph 14.
17 I have a question about the last sentence in
18 that paragraph.

Exh 2.txt

19 A. Paragraph 14.

20 Q. Paragraph 14, it says "I am currently
21 attempting to sell the Swirl Wrap product in the United
22 States where the Swirl Wrap product is made using the
23 Swirl Wrap packaging method."

24 Do you see that?

25 A. Yes.

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1 Q. Is the product that you're attempting to sell
2 made using case one where the entire product is packaged
3 outside the United States or case two where the product
4 is compressed outside of the United States but boxed in
5 the United States or does it matter?

6 A. The first scenario, where we're boxing it
7 outside the United States, so completing the method of
8 packaging outside the United States, selling to
9 Wal-Mart.

10 Q. Okay. Are you selling or soliciting sales for
11 the product that is compressed outside the United States
12 but boxed within the United States?

13 A. Not yet.

14 Q. Do you intend to continue utilizing a process
15 where product is packaged in part outside the United
16 States and partly in the United States?

17 A. Possibly, but not -- that's not finalized yet.

Exh 2.txt

18 Q. And for what reason would you do that?

19 A. Do what?

20 Q. Would you utilize a process where the packaging
21 takes place both inside and outside the United States as
22 opposed to a process where the packaging occurs solely
23 abroad?

24 A. There might be reasons where we needed to bring
25 in the boxes separate from the mattress.

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1 Q. When did Zinus begin to contemplate moving from
2 the original packaging process for the Real
3 Mattress-in-a-Box product to some other process?

4 A. Prior to August, just slightly prior to August.

5 Q. Can you describe what investigation or research
6 took place leading to the ultimate decision to move to a
7 new process?

8 A. Yes. We were highly motivated by our customer
9 Wal-Mart due to the fact that Dreamwell had sent them a
10 letter indicating that we would be infringing on their
11 patent and properly so, I guess, Wal-Mart had to do an
12 internal investigation to make sure that they were doing
13 the right thing and we were doing the right thing.

14 Q. And what happened as a result of that
15 investigation?

16 A. They needed something that would obviously --

Exh 2.txt

17 obviously go around the patent.

18 Q. And so what -- can you describe what happened
19 next in terms of the process of investigating
20 alternatives? And I don't want you to disclose any
21 attorney-client communications as part of this process.
22 I want you to --

23 A. Very simple. It was a public article written
24 about a company called Magni years ago who invented the
25 Mattress-in-a-Box and through our investigation, we

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1 found that they had been using this process for 50 years
2 or some long period of time.

3 And so that was our inspiration of Swirl Wrap.

4 Q. Can you describe -- strike that.

5 was it -- did you personally see whatever was
6 written by Magni about their process?

7 A. Yes, I'm the one that read the article.

8 Q. Was it an article or a patent?

9 A. No, it was an article. It was in a mattress
10 publication or bedding publication.

11 Q. What did you understand their packaging process
12 to be from the article or did the article tell you
13 anything about that?

14 A. It didn't. The article didn't disclose about
15 their packaging. It just said it had been doing

Exh 2.txt

16 Mattress-in-a-Box and had for some time. Through our
17 investigation, we found it was a long, long time ago.

18 And so that's what we learned.

19 MR. WILSON: I'd like to have marked as
20 Exhibit 208 what appears to be -- a document bearing
21 Bates number P 002000.

22 (Exhibit No. 208 was marked.)

23 BY MR. WILSON:

24 Q. Do you recognize this document?

25 A. Yes.

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1 Q. What is this document?

2 A. It's an e-mail.

3 Q. Were you copied on this e-mail? I don't see
4 your name on it.

5 A. I thought I was.

6 Q. At any rate, you've seen this is at some
7 point --

8 A. Yes.

9 Q. -- as part of your business with Zinus,
10 correct?

11 A. Yes.

12 Q. This document, Exhibit 208, refers to four
13 different packing methods.

14 Did Zinus experiment with four different
Page 48

Exh 2.txt

15 methods to package product after it decided to move away
16 from the original Mattress-in-a-Box process?

17 A. No, I believe Mr. CR Ahn, he's Korean, but his
18 English meaning four different types of taping.

19 Does that answer your question, Ken?

20 Q. Yes, it does. Who is Mr. CR Ahn?

21 A. He is president of Zinus China.

22 Q. Who is Mr. TP Lee?

23 A. He is CEO.

24 Q. Of --

25 A. Of Zinus.

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1 Q. In Korea?

2 A. In Korea.

3 Q. Now, I'd like you to look -- kind of go out of
4 order here, but I'd like you to look at the third item
5 here first under bullet 3, putting into no bottom and no
6 top PE sleeve?

7 A. Uh-huh.

8 Q. Did Zinus experiment with a packaging method
9 involved putting the compressed mattress into a no
10 bottom no top polyethylene sleeve?

11 A. Yes.

12 Q. Why did Zinus --

13 A. I think -- if I understand his English, that is
Page 49

Exh 2.txt

14 your flexible film, that's the meaning of no bottom and
15 no top.

16 Q. Do you know whether Zinus in China experimented
17 with a packaging method which involved rolling up the
18 mattress and then sliding a sleeve over the top of it?

19 A. No.

20 Q. No, you don't know if --

21 A. No, we did not.

22 Q. Do you recall, when you originally saw this
23 e-mail, seeing pictures attached to it?

24 A. I don't recall.

25 MR. WILSON: Darien, I appreciate the document

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1 production that you provided to us. I think you did a
2 good job trying to run down the documents. I did notice
3 on this one, I just noticed today it does reference what
4 sounds like it's four photographs.

5 If you can take a look and see if there are --
6 if there are pictures that --

7 MR. WALLACE: I don't want to testify here, but
8 the answer is there's only two. I realize it says
9 there's four but there's only two, and they're produced.
10 He said he shows four and the attachment had two and I
11 confirmed that.

12 MR. WILSON: Okay, great. Let me just have
Page 50

Exh 2.txt

13 marked as Exhibit 209 a couple of photographs bearing
14 Bates numbers P 2001 and P 2002.

15 (Exhibit No. 209 was marked.)

16 BY MR. WILSON:

17 Q. Have you seen Exhibit 209 before?

18 A. I don't recall, Ken. I honestly don't recall.

19 MR. WILSON: Darien, I don't want you to
20 testify, but are these documents do you think --

21 MR. WALLACE: These were the documents
22 attached, yes.

23 MR. WILSON: Okay.

24 BY MR. WILSON:

25 Q. But you don't --

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1 A. I know these processes.

2 Q. But you don't recall seeing these documents
3 before, right?

4 A. I could have, but it was back in August.

5 So I don't -- I know what these are, put it to
6 you this way.

7 Q. What are they?

8 A. These are the Swirl wrap packaging method.

9 Q. Let me turn back to Exhibit 208 again, which is
10 the e-mail that we were talking about.

11 I'd like you to look at item number 4, which
Page 51

Exh 2.txt

12 refers to round shape inner box.

13 You see it suggests putting into a round shape
14 inner box made of cardboard.

15 Did Zinus experiment with a packaging method
16 that involved using two cardboard boxes, an outer box
17 and then a second inner box that would serve as a type
18 of containment sleeve?

19 A. I don't think so.

20 Q. Zinus -- is it fair to say that Zinus U.S. --

21 A. No, not to my understanding did we ever -- we
22 might have experimented one or two times, but we would
23 have quickly gone away from that.

24 Q. why would Zinus have quickly gone away from
25 that approach?

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1 A. Because of the Swirl Wrap with the flexible
2 film was definitely better.

3 Q. Better in what way?

4 A. In holding the mattress together.

5 Q. The first item in this e-mail refers to four
6 taping.

7 Do you see that?

8 A. Yes.

9 Q. Does that refer to a method that involved
10 rolling up the compressed mattress and then attempting

Exh 2.txt

11 to secure it with tape without the flexible film?

12 A. Yes. No, with flexible film.

13 I think his meaning here is -- wait a minute,
14 let me read this.

15 Q. Why don't you read the entire document. I want
16 to make sure we're --

17 A. I mean you're assuming that I understand his
18 English completely, too, okay.

19 Okay. I've read it, Ken.

20 Q. Did Zinus experiment with a packaging method
21 that involved rolling up the mattress, the compressed
22 mattress and taping the sheath or the bag closed without
23 a flexible film backing?

24 A. It appears that they did.

25 Q. I take it that method has not been used?

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1 A. That's correct, that method has not been used.

2 Q. Why is that?

3 A. Not strong enough.

4 Q. Okay.

5 A. I think I mentioned earlier in my deposition,
6 if we just take the compressed mattress and tape it and
7 drop it into the box, it might look okay for that time
8 being, but during transportation and handling, if that
9 bag is punctured, it would gradually open and bust open

Exh 2.txt

10 the box.

11 Q. Zinus ultimately concluded that utilizing
12 taping in conjunction with the flexible fabric would
13 perform or would provide a more effective solution to
14 preventing the expansion of the mattress, correct?

15 A. As an improvement above and beyond this point
16 number one, but not the best solution.

17 Q. Do you see the reference to inflating power and
18 it's the second bullet of paragraph 2, still
19 insufficient to prevent the inflating power?

20 A. Yes.

21 Q. Do you have an understanding of what is
22 referenced by inflating power? That term also is in the
23 second bullet point in paragraph 1.

24 A. I think that meaning is also as I described it
25 to you, during transportation, this mattress if not

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1 properly secured would potentially be punctured and
2 inflate.

3 MR. WILSON: I'd like to have marked as
4 Exhibit 210 a document bearing Bates number P 002010.

5 (Exhibit No. 210 was marked.)

6 BY MR. WILSON:

7 Q. Do you recognize this document?

8 A. Yes.

Exh 2.txt

9 Q. Is this an e-mail that you sent to Simmons?

10 A. Yes, to Mr. Eitel.

11 MR. WILSON: I need to take a break for just a
12 second, okay? Let's go off the record.

13 (Recess taken 5:24 to 5:30.)

14 MR. WILSON: Back on the record.

15 BY MR. WILSON:

16 Q. So I'd like you to take a look at Exhibit 210
17 and in the first sentence of the second paragraph, you
18 refer to "The fact that we had developed a new, improved
19 product."

20 Do you see that?

21 A. Uh-huh.

22 Q. What did you consider the improvement to be of
23 the Swirl Wrap product?

24 A. There was not an improvement to Swirl Wrap.

25 I was just making it known to Mr. Eitel that we

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8

1 had developed Swirl Wrap, a product we called Swirl
2 Wrap, a packaging method we called Swirl Wrap.

3 Q. Okay. So when you referred to how you
4 developed a new, improved product, you just wanted to
5 identify that you had found a new method?

6 A. Yeah, new method, yes, that's correct.

7 Q. Have you received any feedback from customers

Exh 2.txt

8 relating to your -- strike that.

9 Let me ask you this: Have you delivered any of
10 the Swirl Wrap product to customers?

11 A. Yes.

12 Q. Have you received any feedback from customers
13 regarding the Swirl Wrap packaged product as compared to
14 the original packaged product?

15 A. The feedback that I received from Wal-Mart was
16 that the package looks fine and that was it.

17 Q. When you switched to the Swirl Wrap method, did
18 you change the price of the product?

19 A. No.

20 Q. Did the change to the Swirl Wrap -- strike
21 that.

22 Is the change to the Swirl Wrap method
23 something that you've advertised as a product
24 improvement?

25 A. Not yet.

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1 Q. Has the switch to the Swirl Wrap product
2 changed cost of manufacturing or packaging the product?

3 A. Possibly.

4 Q. How so?

5 A. Either up or down, but I can't tell you which
6 at this point.

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Exh 2.txt

7 My presumption is it would be more cost
8 efficient.

9 Q. I take it that Zinus has not done any type of
10 analysis of cost changes resulting from the Swirl wrap
11 method?

12 A. Could have.

13 Q. You're not aware --

14 A. Not aware.

15 Q. Did the switch to the Swirl wrap change in any
16 significant way the time it takes to package the
17 product?

18 A. Not to my -- no, not to my knowledge.

19 Q. Has Zinus documented any change in damage from
20 the expansion of the compressed mattresses during
21 shipping since it's changed to the Swirl wrap product?

22 A. I don't think so.

23 Q. Were there any research and development costs
24 relating to the switch to the Swirl wrap product?

25 A. Oh, yes.

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1 Q. Do you have any estimate of what those costs
2 were?

3 A. I don't know what those are, but there
4 certainly were costs involved.

5 Ken, if I may, I'd like to expand on my
Page 57

Exh 2.txt

6 response with respect to the feedback --

7 Q. Sure.

8 A. -- from Wal-Mart.

9 The package was fine was the feedback, and the
10 reason that it was fine is because his legal department
11 agreed that it was an obvious improvement to the
12 original and therefore, was not in violation or
13 infringement of any complaint.

14 Q. Did you receive any feedback from Wal-Mart on
15 the relative effectiveness of the Swirl Wrap process in
16 containing the expansion of the compressed mattress?

17 A. No.

18 Q. Did you consider the -- do you consider the
19 Swirl Wrap process to be novel?

20 A. What do you mean?

21 Q. Did you consider your move to Swirl Wrap
22 process to be inventive?

23 A. To some extent, but mostly it is -- it was
24 inspired from old technology, just brought into current
25 times.

56

1 Q. To what extent did you consider the move to the
2 Swirl Wrap process to be inventive?

3 A. Through potentially automating it versus
4 manually.

Exh 2.txt

5 Q. Are you aware of whether Magni used an
6 automated process or manual process?

7 A. Not aware.

8 Q. Does Zinus intend to apply for a patent for the
9 swirl wrap process?

10 A. I'm not sure we can, because I think it was
11 patented before.

12 Q. I take it that Zinus has not to date applied
13 for a patent on the swirl wrap process, correct?

14 A. Not to my knowledge in the United States.

15 Q. Has Zinus applied for the patent for a swirl
16 wrap process outside the United States?

17 A. Potentially, but I don't know that.

18 Q. If Zinus had applied for a patent outside the
19 United States, it would have been Zinus China, correct,
20 or Zinus Korea?

21 A. Yes.

22 MR. WILSON: I'd like to have marked as
23 Exhibit 211 a document bearing Bates number P 2019.

24 (Exhibit No. 211 was marked.)

25 BY MR. WILSON:

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1 Q. Do you recognize Exhibit 211?

2 A. Yes.

3 Q. What is it?

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Exh 2.txt

4 A. It's a Swirl Wrap mattress it appears.

5 Q. Does this -- strike that.

6 Does Exhibit 211 accurately depict a Swirl Wrap
7 mattress packaged using ribbon-shaped bands?

8 A. It appears that way from this photo.

9 MR. WILSON: I don't have any other questions.

10 MR. WALLACE: Would you like to take a break
11 now or should I just go right --

12 MR. WILSON: If you have questions, feel free
13 to ask them.

14 EXAMINATION BY MR. WALLACE:

15 Q. Mr. Reeves, I'm just going to ask you a few
16 questions now to clarify the testimony that you just
17 gave in case there was some ambiguities.

18 In your testimony before, you said that you had
19 replaced that step with Swirl Wrap and I think you -- it
20 referred to something to Wal-Mart and you said yes.

21 Have you ever offered the Swirl Wrap product to
22 anybody other than Wal-Mart?

23 MR. WILSON: I'm going to move to strike the
24 first part of the question, but I'm fine with the second
25 part.

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1 MR. WALLACE: Okay. The reason I brought it up
2 as ambiguous, the answer that came from the question

Exh 2.txt

3 that didn't have anything to do with it.

4 BY MR. WALLACE:

5 Q. So I'll repeat, then.

6 You testified that there were various types of
7 mattresses in a box, including foam, air, spring, two
8 types of spring, the original process and the swirl wrap
9 process.

10 There's four types of Mattress-in-a-Box.

11 Foam, air, spring and there are two types of
12 spring; is that right?

13 A. No, I did not testify to that.

14 Q. How many types of Mattress-in-a-Box are there?

15 A. There's three that we currently manufacture.

16 Q. What are the three?

17 A. Coil in a pocket, foam and air.

18 Q. Okay. And the foam in pocket, are there two
19 types of that? Sorry, spring --

20 A. The coil in the pocket, there's only one type.

21 MR. WILSON: I understand.

22 MR. WALLACE: You do?

23 MR. WILSON: Let's go off the record for a
24 second.

25 (Off record discussion.)

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1 MR. WALLACE: Back on the record.
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Exh 2.txt

2 BY MR. WALLACE:

3 Q. Is it true that the spring in pocket type of
4 Mattress-in-a-Box can be manufactured in two ways?

5 MR. WILSON: Objection, the question is vague
6 and leading.

7 THE WITNESS: Yes.

8 BY MR. WALLACE:

9 Q. What are the two ways?

10 A. One is the original packaging method and the
11 other one is the Swirl wrap method.

12 Q. Have you tried to sell the original method or
13 Mattress-in-a-Box manufactured in the original method to
14 anybody other than Wal-Mart?

15 A. Yes.

16 Q. Who did you try to sell it to?

17 A. Other countries, Canada, Europe.

18 Q. Have you ever tried to sell it to someone in
19 the United States?

20 A. Initially, Wal-Mart.

21 Q. Anybody other than Wal-Mart?

22 A. Yes.

23 Q. Who?

24 A. I mean at a trade show, we would show our
25 product.

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Exh 2.txt

1 Q. Have there been any deliveries in the last
2 month of the Swirl Wrap product manufactured in the
3 original process to anybody other than Wal-Mart?

4 MR. WILSON: Objection, the question is vague.

5 BY MR. WALLACE:

6 Q. For example, in the beginning of September.

7 MR. WALLACE: I'm just trying to get the facts.

8 MR. WILSON: I'll also object it's beyond the
9 scope of this deposition. I wasn't probing into the
10 original Mattress-in-a-Box product or sales. I didn't
11 ask him about those.

12 MR. WALLACE: Let's go off the record here.

13 (Off record discussion.)

14 MR. WALLACE: Back on the record.

15 BY MR. WALLACE:

16 Q. Regarding paragraph 7 of your declaration and
17 the step described therein, when asked whether the
18 colored film was used in all Swirl Wrap products up
19 until the date of your declaration on September 29th,
20 you said that was true.

21 Can you think of any time before September 29th
22 in which Zinus made a Swirl Wrap product that didn't
23 have the colored PE tarp used as the film?

24 A. We could have used it -- colored, some were
25 blue, some were white, they were colored.

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Exh 2.txt

1 Q. In the pictures shown in Exhibit 211, P 2019,
2 was that made before the date of your declaration on
3 September 29th?

4 A. I don't know that would be fact, but to me,
5 that's a white color.

6 Q. Okay. Referring to Exhibit 207 that was
7 Exhibit R-F to your declaration, you implied that this
8 was the only Swirl wrap product that was made with tape.

9 Can you think of any other Swirl wrap products
10 you made in this manner?

11 MR. WILSON: Objection, leading, ,
12 mischaracterizes testimony, but you can answer.

13 THE WITNESS: I think I mentioned in my
14 deposition that we had made numerous taped Swirl wrap
15 products, less than a hundred and -- does that answer
16 your question?

17 BY MR. WALLACE:

18 Q. Yes. And of these less than a hundred Swirl
19 Wrap products made with tape, did you send any of those
20 to Wal-Mart?

21 A. Yes.

22 Q. About how many?

23 A. I don't know the number, but we did send some
24 to Wal-Mart.

25 Q. More than two?

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Exh 2.txt

1 A. May have been.

2 Q. Bear with me, I'm trying to find the e-mails
3 here.

4 You said that you developed the Swirl wrap
5 product at the request of Wal-Mart because Wal-Mart
6 wanted something, you said obviously didn't do
7 something.

8 Could you explain what specifically the
9 decision was that Wal-Mart made about the Swirl wrap
10 product?

11 A. No.

12 Q. Do you know who at Wal-Mart made the decision?

13 A. Their legal department.

14 Q. Do you know anybody other than their legal
15 department?

16 A. Their outside legal department.

17 Q. Do you know who that was?

18 A. One in New York and one in Chicago.

19 Q. Do you know if the one in New York and the one
20 in Chicago ever saw the Swirl wrap product with the tape
21 in it?

22 A. The one in Chicago.

23 Q. How do you know they saw the product?

24 A. We sent it to them.

25 MR. WILSON: I'll object to the last two

Exh 2.txt

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1 questions as lacking foundation, which the answer
2 revealed.

3 BY MR. WALLACE:

4 Q. You previously testified that there were -- in
5 response to questions about two cases of Swirl Wrap
6 product, the first being adhesive tape and the second
7 being banding, that you attempted to sell only the
8 second case in boxes in the United States.

9 Did you ever attempt to sell the first case of
10 Swirl Wrap product?

11 A. Initially, we showed Wal-Mart the taping as
12 well as the banding, but we -- we believed that the
13 banding was the best solution and Wal-Mart entrusted us
14 to choose which was best.

15 MR. WALLACE: Okay. I have no further
16 questions.

17 MR. WILSON: All right. We're good.

18 (WHEREUPON, the NOVEMBER 15, 2007 deposition of
19 SCOTT REEVES was adjourned at 5:50 p.m.)

20

21

22

23

24

SCOTT REEVES

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Exh 2.txt

9

1 I, LOUISE MARIE SOUSOURES, duly authorized to
2 administer oaths pursuant to Section 2093(b) of the
3 California Code of Civil Procedure, do hereby certify:
4 That the witness in the foregoing deposition was by me
5 duly sworn to testify the truth in the within-entitled
6 cause; that said deposition was taken at the time and
7 place therein cited; that the testimony of the said
8 witness was reported by me and was hereafter transcribed
9 under my direction into typewriting; that the foregoing
10 is a complete and accurate record of said testimony; and
11 that the witness was given an opportunity to read and
12 correct said deposition and to subscribe the same.

13 Should the signature of the witness not be
14 affixed to the deposition, the witness shall not have
15 availed himself or herself of the opportunity to sign or
16 the signature has been waived.

17 I further certify that I am not of counsel, nor
18 attorney for any of the parties in the foregoing
19 deposition and caption named, nor in any way interested
20 in the outcome of the cause named in said caption.

21 DATED: _____, 2007

22

23

LOUISE MARIE SOUSOURES, CSR 3575

24

25

Exh 2.txt

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EXHIBIT 3

Zinus, Inc. v. Simmons Bedding Co., et al.
Case No. 07-CV-03012-PVT

From: crahn [mailto:crahn@zinus.com.cn]
Sent: Monday, August 06, 2007 4:29 PM
To: Tplee
Subject: FW:

Dear Sir,

Attached please refer to the pictures showing 4 different packing methods.

Given the attorney's suggestion to make a couple of different versions, we have tried 4 packing schemes with the following opinions;

1. Four Taping
 - The most convenient method for packing.
 - The problem is inflating power, which can not be prevented by taping and hurt the box shape. We did not tape the top& bottom edges in view of our experience of corner recovery issue.
 - The shape (looking) is not so good since the rolled mattress is not a perfect round. According to our various studies, the outer box showed many different twisting by different taping and different directions of inflating pressure.
2. Rolling with Back Support Fabric and Taping
 - Looking and stability are better than taping without backing fabric.
 - Still insufficient to prevent the inflating power.
 - Backing fabric shall not be classified as a containment sleeve.
3. Putting into No Bottom & No Top PE Sleeve
 - The best scheme in terms of productivity, which is entirely different with the drawing of containment sleeve and relevant descriptions in Simons' patent.
 - However, need to discuss with our attorney concerning the concept of containment sleeve.
4. Round Shape Inner Box
 - Putting into a round – shape inner box made of cardboard.
 - The concern is classification of containment sleeve, but the scheme itself is entirely different.
 - We should call it "Inner Box" for eventual "Mattress in A Box". We can firstly locate the inner box in the outer box and put the rolled mattress into the already prepared box with inner box, if necessary.

Consulting with the attorney will enable us select a proper scheme in view of the definition of containment sleeve. When the methods of 3 or 4 are allowed, we will be able to achieve a good shape, product safety and high productivity.

Best regards,
CR

P 002000

EXHIBIT 4

Zinus, Inc. v. Simmons Bedding Co., et al.
Case No. 07-CV-03012-PVT

From: Dennis Sones [mailto:dennis@mobiushmarketing.com]
Sent: Friday, September 07, 2007 9:15 AM
To: Jonathan; 'bruce'
Cc: brad; 'C.R Ahn'; 'Business.Dept_Kian'; Doc Kim;
scott.reeves@zinus-inc.com
Subject: Re: Sample request for WMT

Jonathan -thanks for your confirming email. What you have stated is correct.

With regard to the swirl wrap for memory foam, I believe that we do not have any patent issues with memory foam mattresses. But, Please let Mr. Scott Reeves confirm this to you.

Thanks!
DS

On 9/6/07 6:10 PM, "Jonathan" <jwha@zinus.com.cn> wrote:
Dear Dennis,

I'm confusing a little since so many e-mails for this samples and I listed the samples as below.

Please check and confirm for the below list.

1pc 9" Icoil mattress with Serta Logo T/F/Q size each (no need Slumbr and we don't have this logo) Dieline of new box size (T/F/Q) 3pcs D/box only T/F/Q size each To Bentonville office Due Date : 14th Sep.

And Dennis, the size of foam mattress is not changed.

However, please confirm we don't need to change to SWIRL WRAP package on foam mattress.

Dear Bruce, Dennis

The 3 mattress with white white swirl wrap and GREEN bands was shipped to CA office yesterday via UPS#H6766469427.

Thanks,
Jonathan

On 9/6/07 5:27 PM, "Jonathan" <jwha@zinus.com.cn> wrote:
Dear Bruce,

We shipped 3 queens size WMT mattress with Serta logo with new package way.

Thanks,
Jonathan

P 002020

EXHIBIT 5

Zinus, Inc. v. Simmons Bedding Co., et al.
Case No. 07-CV-03012-PVT

From: Tim Acord [mailto:tim@zinusinc.com]

Sent: Thursday, September 27, 2007 11:21 AM

To: 'Tplee'; 'crahn'; '사장님'; 'kenny'; 'Jonathan'; 'Kian'; 'Fred RYU'; 'ALAN_CHOI'

Cc: 'Doc "BP" Kim'; scott.reeves@zinusinc.com; 'Dennis Sones'; 'Jose Garcia'; 'Judy Nichols'; 'Kathy Baker'; 'Darcy Keener'

Subject: meeting recap mattress in a box 9/26

Today 9/26/07, Doc, Tim, Scott, Dennis, Jose and Kathy met with Roderick Stakley, Brady Blake and Nathan McKinney at the WMT/Sam's layout center to finalize on the 100 store mattress in a box test.

Some of the general discussion that took place in regards to the mattress test were as follows.

- Branding
 - a. We presented private label Slumber 1 brand, yet Roderick and Brady were pretty adamant that they prefer a national brand. Roderick wants to talk to Serta in regards to getting the brand name in WMT. Scott has forwarded Serta contact information to Roderick and Jean even though it was explained the hold up was a WMT / Sam's internal issue.
 - b. Obusforme was discussed yet was not received well by Roderick.
 - c. Also discussed Simmons and Roderick confirmed that Simmons is his largest brand recognition on his pillow line.
 - d. Tasks are to keep working very hard to get Serta or Simmons for instant credibility.
- Packaging
 - a. Upon Scott's confirmation we will be going back to the old package way of mattress in the white plastic duffle VS. swirl wrap.
 - b. Factory / Jonathan: Please confirm the size of the mattress boxes. Please note that in no instance can the box be bigger than 16" wide. This will allow 3 boxes to be displayed on one (48") shelf.
 - c. Jonathan: We did not have good luck with the new "all in one" box without outer sleeve. The box was not very strong and split into when handled with mattress inside. Either we have to go back to inner box with sleeve or make sure the new box design is stronger.
 - d. Handles on the new box were coming loose. When tilted over to pull, the screws were pulling completely thru the box. Please make sure we use bigger and stronger screws.
 - e. Screw holes for the wheels were not located correctly. New holes had to be drilled.
- Display materials / mini samples
 - a. Flash Player: They liked the idea. We have to be able to correct so we can get audio from the flash player.
 - b. Flash Player will not be affixed to shelf using bracket. Dennis to work with WMT marketing to develop a cardboard display that will fit on shelf and hold flash player.
 - c. Dennis and MWT marketing to finalize the display materials within next 2-3 weeks.
 - d. Mini samples: We must develop a "store kit" list to include but not be limited to mini samples, mini smartbases, flash player, display signage, etc. Will need to send one kit to each store for the test. Will hire 3rd party to visit stores and monitor set up within first week.

P 002021

- Launching test
 - a. 100 Test stores still to be determined. Roll out to stores second week in January.
 - b. Need to finalize what regional marketing plans to utilize
 - c. Pushed Roderick to consider a 6 month test period. Not finalized yet.
- Domestic Program
 - a. Roderick emphasized that due to the nature of the item and the slow warehouse turn, we will need to do as domestic program. Please note that he not only intends to do domestic program for test period but for future move to modular in all stores as well. He indicated this will never be a DI program.
 - b. We must get domestic vendor number in order to move forward. Our item number is currently on hold due to the old North Pole claim that is listed under Zinus vendor number. This must be cleared before we can move forward. Tim and Judy are working to get the claim re-issued to North Pole.
 - c. It is very much suspected that in order to continue working with this buyer we will also need to provide domestic program for all items to include current memory foam line.

We also had a brief opportunity to show some of the sustainable packaging initiatives we were working on for the current memory foam items. Roderick did not seem all that impressed yet we are going to pursue further with him on this as we feel it is important. BV office will be sending the packagings that we presented today. Fred / Jonathan: Please source variety of materials to achieve the looks of each and offer costing and samples within next 10 days. Jose/Darcy please take pictures of each sustainable package and copy all on the pictures then send packages to factory.

Roderick confirmed that there will be no immediate change to the memory foam modular yet also confirmed specs are being written that will be offered to all potential memory foam suppliers to bid. The decision will be made prior to July 08. We are attempting to get Roderick to allow us to make immediate running change to pillows and toppers to include ventilation, charcoal and green tea. He has denied the request yet we will continue to push.

We were not allowed to present new items today and Tim will be pursuing another meeting later for this. If possible, please send 5 zone topper to show.

There is a big opportunity to educate Roderick on the benefits of memory foam with respect to sleep. Roderick made a comment today that he is not selling memory foam, he is basically selling a chemical. This tells us of the lack of knowledge he has on memory foam.

Regards, Tim

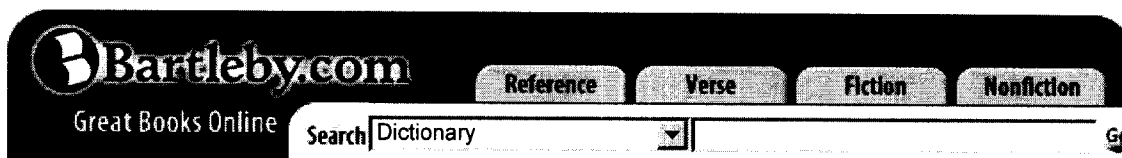
EXHIBIT 6

Zinus, Inc. v. Simmons Bedding Co., et al.
Case No. 07-CV-03012-PVT



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insert

SYLLABICATION: in·sert

PRONUNCIATION: ĭn-sûrt'

TRANSITIVE Inflected forms: **in·sert·ed**, **in·sert·ing**, **in·serts**

VERB: **1.** To put or set into, between, or among: *inserted the key in the lock.* See synonyms at **introduce**. **2.** To put or introduce into the body of something; interpolate: *insert an illustration into a text.* **3.** To place into an orbit, trajectory, or stream.

NOUN: (ĭn'sûrt') Something inserted or intended for insertion, as a picture or chart into written material.

ETYMOLOGY: Latin *īnserere*, *īnsert-*: *in-*, in; see *in-*² + *serere*, to join; see *ser-*² in Appendix I.

OTHER FORMS: **in·sert'er** —NOUN

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EXHIBIT 7

Zinus, Inc. v. Simmons Bedding Co., et al.
Case No. 07-CV-03012-PVT



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contain

SYLLABICATION: con·tain

PRONUNCIATION: kən-tān'

TRANSITIVE VERB: Inflected forms: **con·tained**, **con·tain·ing**, **con·tains**

1a. To have within; hold. **b.** To be capable of holding. **2.** To have as component parts; include or comprise: *The album contains many memorable songs.* **3a.** To hold or keep within limits; restrain: *I could hardly contain my curiosity.* **b.** To halt the spread or development of; check: *Science sought an effective method of containing the disease.* **4.** To check the expansion or influence of (a hostile power or ideology) by containment. **5.** *Mathematics* To be exactly divisible by.

ETYMOLOGY: Middle English *contenien*, from Old French *contenir*, from Latin *continēre* : *com-*, *com-* + *tenēre*, to hold; see **ten-** in Appendix I.

OTHER FORMS: **con·tain'a·ble** —ADJECTIVE

SYNONYMS: *contain*, *hold*¹, *accommodate* These verbs mean to have within or have a capacity. *Contain* means to have within or have as a part or constituent: *The book contains some amusing passages.* *Hold* stresses capacity for containing: *The pitcher holds two pints but contains only one.* *Accommodate* refers to capacity for holding comfortably: *The restaurant accommodates 50 customers.*

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sleeve

PRONUNCIATION: slēv

NOUN: 1. A part of a garment that covers all or part of an arm. 2. A case into which an object or device fits: *a record sleeve*.

TRANSITIVE Inflected forms: **sleeved**, **sleev-ing**, **sleeves**

VERB: To furnish or fit with sleeves or a sleeve.

IDIOM: **up (one's) sleeve** Hidden but ready to be used: *I still have a few tricks up my sleeve*.

ETYMOLOGY: Middle English *sleve*, from Old English *sleāf*. See **sleubh-** in Appendix I.

OTHER FORMS: **sleeve'less** —ADJECTIVE

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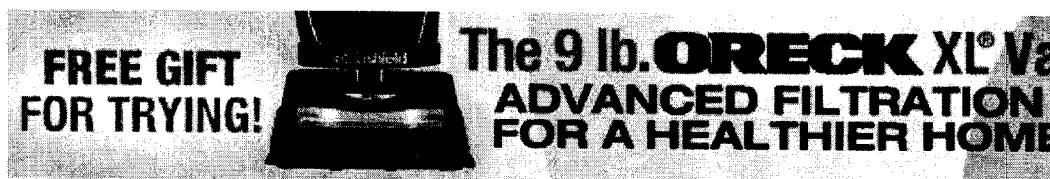
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Zinus, Inc. v. Simmons Bedding Co., et al.
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con·vo·lu·tion [kon-vuh-loo-shuhn] [Pronunciation Key](#) - [Show IPA Pronunciation](#)

—*noun*

1. a rolled up or coiled condition.
2. a rolling or coiling together.
3. a turn of anything coiled; whorl.
4. *Anatomy.* one of the sinuous folds or ridges of the surface of the brain.

[Origin: 1535-45; < L *convolūt-* (see *CONVOLUTE*) + *-ION*]

—*Related forms*

con·vo·lu·tion·al, **con·vo·lu·tion·ar·y** [kon-vuh-loo-shuh-ner-ee] [Pronunciation Key](#) - [Show IPA Pronunciation](#), *adjective*

—*Synonyms* 3. twist, winding, sinuosity.

[Dictionary.com Unabridged \(v 1.1\)](#)

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con·vo·lu·tion  (kŏn'və-lōō'shən) [Pronunciation Key](#)

n.

1. A form or part that is folded or coiled.
2. One of the convex folds of the surface of the brain.

con'vo·lu'tion·al *adj.*

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convolution

1545, from L. *convolutus*, pp. of *convolvere* "to roll together," from *com-* "together" + *volvere* "to roll" (see *vulva*).

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convolution

noun

1. the shape of something rotating rapidly [syn: whirl]
2. a convex fold or elevation in the surface of the brain [syn: gyrus]
3. the action of coiling or twisting or winding together

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con·vo·lu·tion (kŏn'və-lōō'shən)

n.

1. A form or part that is folded or coiled.
2. One of the convex folds of the surface of the brain.

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Main Entrv: **con·vo·lu·tion**



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